

ESTTA Tracking number: **ESTTA528983**

Filing date: **03/27/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055426
Party	Plaintiff Run It Consulting, LLC
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST , SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Opposition/Response to Motion
Filer's Name	Matthew Swyers
Filer's e-mail	mswyers@TheTrademarkCompany.com
Signature	/Matthew H. Swyers/
Date	03/27/2013
Attachments	Opposition to Motion to Strike.pdf (44 pages)(1760777 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

:
:
:
:
:
:
:
:
:
:

Cancellation No. 92055426

OPPOSITION TO MOTION TO STRIKE

COMES NOW Petitioner, Run It Consulting, LLC, (hereinafter “Petitioner”), by and through counsel, The Trademark Company, PLLC, and submits the instant opposition to Registrant Augusto Lodi’s (hereinafter “Registrant”) *Motion to Strike In Part Petitioner’s First Notice of Reliance – Confidential Information*.

STATEMENT OF FACTS

1. On or about June 25, 2012 Petitioner served upon the Registrant *Petitioner’s First Set of Interrogatoires to Registrant*. See Exhibit A.
2. On or about October 5, 2012 Registrant served upon Petitioner *Registrant’s Supplemental Response to Petitioner’s First Set of Interrogatories*. See Exhibit B.
3. In response to Interrogatory No 22, rather than providing an answer Registrant merely incorporated the documents he had produced in response to Petitioner’s requests for

production of documents. *See* Exhibit B at pp 18-19. Registrant never supplemented this response further to substitute an actual answer in lieu of the incorporated documents.

4. On or about March 8, 2013 Petitioner timely file its *Notice of Reliance* relying, in part, on 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5) to introduce the documents incorporated into Petitioner's interrogatory answers and, specifically, response to Interrogatory No. 22. *See Petitioner's First Notice of Reliance – Confidential Information*, filed with the Board on March 8, 2013. *See also* Exhibit B at pp 18-19.

5. On or about March 14, 2013 Registrant filed the instant motion to strike those documents sought to be introduced by and through Petitioner's reliance on 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5).

6. The instant opposition is now filed.

ARGUMENT

I. The Instant Motion to Strike Should Be Deferred Until the Final Hearing.

If a motion to strike a notice of reliance raises objections that cannot be resolved simply by reviewing the face of the notice of reliance and attached documents to the notice of reliance, the Board will defer determination of the motion until the final hearing. TBMP 707.02(b)(2). *See also Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992); *M-Tek Inc. v. CVP Systems Inc.*, 17 USPQ2d 1070, 1073 (TTAB 1990) (under the circumstances, whether documents were properly admissible under 37 CFR § 2.120(j)(3)(i) and/or 2.120(j)(3)(ii) deferred).

In the instant case, to move forward with the instant motion the Registrant must establish that the Board can, on the face of the *Notice of Reliance* and attached documents, determine whether the motion to strike is ripe. However, for the instant decision, the Board must look

beyond the *Notice of Reliance* to decide upon the relief requested. Specifically, the Board would need to conduct an investigation of Registrant's discovery responses to properly decide upon the instant motion. As such, under TBMP 707.02(b)(2) it is proper that the Board defer ruling on the Registrant's motion until the final hearing in the matter.

Of note, in Paragraph E of Registrant's motion Registrant attempts to assert that determination is proper at this time. However, Registrant fails to note that throughout his argument he consistently references Petitioner's interrogatories, requests for production of documents, as well as Registrant's responses thereto. These facts alone, and the fact that the Board would need to examine the same, bring into relevance TBMP 707.02(b)(2) and require that the instant ruling be deferred until the final briefing period.

Accordingly, it is respectfully requested that the Board defer upon the instant motion until the briefing stage of this matter.

II. Petitioner's Notice of Reliance Properly Relies Upon 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5).

In the alternative, and should the Board determine that a decision should now be made, it is respectfully submitted that Petitioner properly relied upon 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5) to introduce the documents incorporated into Petitioner's interrogatory answers and, specifically, response to Interrogatory No. 22. *See Petitioner's First Notice of Reliance – Confidential Information*, filed with the Board on March 8, 2013. *See also* Exhibit B at pp 18-19.

Documents provided as all or part of an answer to an interrogatory may be made of record, as an interrogatory answer, by notice of reliance filed in accordance with 37 CFR §§ 2.120(j)(3)(i) and 2.120(j)(5). TBMP §704.11.

In the instant case, Registrant, rather than providing a full and complete response to Petitioner's legitimate interrogatories, merely incorporated, by reference, the documents it produced in responding to Interrogatory No. 22. *See* Exhibit B at pp 18-19. Under the Rules and the Code of Federal Regulations Petitioner is permitted to, pursuant to 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5), introduce these documents by and through a *Notice of Reliance*. It has now done so.

Of note, in challenging this rather straightforward right and procedure, Registrant cleverly attempts to twist the Petitioner's burden under 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5) to retroactively exclude documents that were not properly produced in lieu of an interrogatory answer which, in reality, may be Registrant's actual burden. *See Motion to Strike In Part Petitioner's First Notice of Reliance – Confidential Information*, pp. 3-5. In short, if Petitioner is reading Registrant's argument properly, Registrant is now attempting to argue that because it failed to comply with the rules concerning the manner in which documents are produced in lieu of interrogatories this failure should somehow be imputed to the Petitioner who is properly relying upon the same. In other words, Registrant failed to comply with the rules in incorporating these documents. Accordingly, Petitioner cannot rely upon them under 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5).

In this regard, equity, judicial efficiency, and logic must work against the Petitioner in this strained effort to strike the *Notice of Reliance*.

First, it is clear from the Registrant's answers that the documents were incorporated into the interrogatory answer. Whether they were also produced in response to a request for production of documents is of no matter. They were incorporated into the interrogatory answer

in lieu of answering the same and, accordingly, fall within the rule which allows Petitioner to rely upon the same by and through a *Notice of Reliance*.

Second, judicial efficiency as well as equity mandate that the Registrant not be permitted to strike the instant *Notice of Reliance*. In short, rather than providing answers to a properly propounded interrogatory they clearly incorporated the relied upon documents into their interrogatory answers. At no time did they attempt to supplement this answer or provide Petitioner with any further information thereon. And now, after the Petitioner's trial period has concluded, they file a motion based upon their purported failure to comply with discovery attempting to use the same to potentially strike Petitioner's evidence from the record. The Board can simply not permit this to occur.

Petitioner, and parties as a whole, must be permitted to rely upon discovery responses submitted by the other party. If they cannot, equity at this late date would not be served and judicial efficiency would be hindered by forcing the Petitioner to potentially request the Board to reopen the discovery period in this matter to address the Registrant's sudden contention that it did not provide full and complete answers to Petitioner's properly submitted discovery.

The rules favor the denial of the instant motion. Judicial efficiency favors the denial of the instant motion. Equity demands the denial of the instant motion.

Accordingly, on the basis that the *Notice of Reliance* properly invokes 37 C.F.R. §§ 2.120(j)(3)(i) and 2.120(j)(5) to admit the documents attached thereto, and for the other grounds as set forth above, it is respectfully requested that the instant motion be denied.

CONCLUSION

WHEREFORE Petitioner respectfully requests that the Board defer ruling upon the instant motion until the briefing stage of this matter or, in the alternative, deny the motion as set forth above.

DATED this 27th day of March, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Telephone (800) 906-8626 x100

Facsimile (270) 477-4574

mswyers@TheTheTrademarkCompany.com

Attorney for Petitioner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

:
:
:
:
:
:
:
:
:

Cancellation No. 92055426

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 27th day of
March, 2013, as specified by the rules, to be served, via U.S. Mail, upon:

Michael A. DiNardo, Esq.
Kelley & Kelley LLP
6320 Canoga Avenue, Suite 1650
Woodland Hills, CA 91367

/Matthew H. Swyers/
Matthew H. Swyers

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

:
:
:
:
:
:
:
:

Cancellation No. 92055426

PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT

TO: Augusto Lodi, c/o Scott W. Kelley Esq., Kelley & Kelley LLP, 6320 Canoga Avenue, Suite 1650, Woodland Hills, CA 91367

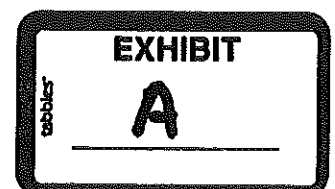
FROM: Run It Consulting, LLC, by and through counsel, Matthew H. Swyers, Esq., The Trademark Company, 344 Maple Avenue West, Suite 151, Vienna, VA 22180.

COMES NOW the Petitioner Run It Consulting, LLC (hereinafter "Petitioner"), by and through counsel, The Trademark Company, and in accordance with the applicable Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure (hereinafter "TBMP") propounds the following interrogatories upon the Registrant Augusto Lodi (hereinafter "Registrant") to be answered within the time provided by the applicable rules of the Board.

DEFINITIONS

A. The term "Petitioner" shall mean Run It Consulting, LLC and/or any present or former servant, agent, attorney or other representative acting on its behalf.

B. The term "Registrant" shall mean Augusto Lodi and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.



C. The term “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

D. The term “in the U.S.” shall mean use in interstate and/or intrastate commerce in the United States.

E. The term “Registrant’s Mark” refers to the mark AMERICAN MUSCLE as identified in U.S. Trademark Registration No. 1,962,898.

F. The term “Petitioner’s Mark” refers to the mark AMERICAN MUSCLE SPORTS NUTRITION COMPANY as identified in U.S. Trademark Serial No. 85/413,449.

G. The term “you” shall mean the party or person to whom these interrogatories are propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom these interrogatories are propounded has the right to or does control or direct and activities.

H. The phrase “legal action” shall mean submission of correspondence to the Registrant or any third party not a party to this proceeding requesting that they cease use of a mark, or institution of any legal proceeding in the United States Patent & Trademark Office, state, or federal court or agency.

I. The term “live” shall mean currently registered with the U.S. Patent and Trademark Office and not dead as it applies to abandoned, cancelled, or successfully opposed trademarks.

J. The term “commerce” is define as “all commerce which may lawfully be regulated by Congress” as found in TEMP sec 901.01.

INTERROGATORIES

INTERROGATORY NO. 1: State in detail the nature of the business, operations, and activities conducted by Registrant.

ANSWER:

INTERROGATORY NO. 2: Identify each person who has knowledge of Registrant's selection and adoption of Registrant's Mark and who has knowledge of how and when it was first used, how it is used today, and how it is intended to be used in the future. To the extent this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the most knowledge.

ANSWER:

INTERROGATORY NO. 3: Describe in detail all goods and services formerly and currently being offered by Registrant in conjunction with Registrant's Mark and any goods or services intended to be used in connection with Registrant's Mark in the future identifying the dates on which Registrant first began such use(s) and/or and the geographic areas in which such use occurred and/or will occur.

ANSWER:

INTERROGATORY NO. 4: Describe any periods since Registrant's alleged date of first use, as set forth in the preceding paragraph, during which Registrant did not make use of the Registrant's Mark.

ANSWER:

INTERROGATORY NO. 5: Identify the date on which Registrant alleges it first began use of Registrant's Mark in interstate commerce in connection with each good and/or services identified in your response to Interrogatory No. 3 and how such use occurred.

ANSWER:

INTERROGATORY NO. 6: Describe in detail how Registrant is currently using Registrant's Mark, including, but not limited to, the geographic areas the mark is used.

ANSWER:

INTERROGATORY NO. 7: With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the channels of distribution by which the goods and/or services of Registrant reach or are expected to reach the ultimate user or consumer as well as the geographic regions in which such channels of distribution were conducted and the dates such channels of distribution were instituted.

ANSWER:

INTERROGATORY NO. 8: With respect to each good and/or service identified in your response to Interrogatory No. 3, indicate the dates each good and/or service was first available for sale, in what regions each good and/or service was available for sale, and by what medium such goods and/or services were offered for sale.

ANSWER:

INTERROGATORY NO. 9: With respect to each good and/or service identified in your response to Interrogatory No. 3, list all retail establishments each good and/or service has been, is, or will be available for sale, the establishments' geographic locations, and the dates each good and/or service was, is, and/or will be available at each retail store.

ANSWER:

INTERROGATORY NO. 10: With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the manner in which Registrant's Mark is promoted in the United States, including but not limited to the media and mode of any marketing efforts as well as the geographic regions in which said promotions are conducted as well as the dates when such manners were instituted.

ANSWER:

INTERROGATORY NO. 11: For each medium identified in the preceding interrogatory, state the annual expenditure for advertising and promotion since inception.

ANSWER:

INTERROGATORY NO. 12: Identify the person or persons who, from the date of Registrant's claimed date of first use of Registrant's Mark to the present, have been responsible for the marketing and/or promotion of Registrant's goods and services under Registrant's Mark indicating the period during which each person was so responsible.

ANSWER:

INTERROGATORY NO. 13: Identify all advertising agencies, public relations agencies or market research agencies that Registrant has used, participated with or cooperated with in advertising, marketing or promoting the goods/services identified in response to Interrogatory No. 3, and indicate the time period(s) during which such activities were conducted.

ANSWER:

INTERROGATORY NO. 14: Identify any and all licensees of Registrant's Mark, if any, and in so doing, describe each licensing arrangement and identify each product and/or service offered or sold by each licensee under Registrant's Mark or similar designation.

ANSWER:

INTERROGATORY NO. 15: Describe in detail all quality control measures adopted and used by Registrant in the oversight of the use of Registrant's Marks by the licensees identified in the preceding interrogatory.

ANSWER:

INTERROGATORY NO. 16: Describe in detail any adversarial proceeding or challenge, if any, involving Registrant's Mark, or any similar designation, before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission, or any court or tribunal, including but not limited to any challenge by cease and desist letter to Registrant's Mark aside from the instant proceedings instituted by the Petitioner.

ANSWER:

INTERROGATORY NO. 17: Identify and describe any and all opinions relating to the Registrant's Mark, including but not limited to Registrant's use of the mark vis-à-vis Petitioner's Mark.

ANSWER:

INTERROGATORY NO. 18: Identify and describe any and all investigations, polls, studies, evaluations, analysis, tests, ratings, or surveys relating to Registrant's Mark.

ANSWER:

INTERROGATORY NO. 19: Describe in detail how Registrant maintained Registrant's date of first use.

ANSWER:

INTERROGATORY NO. 20: Describe in detail Registrant's awareness and knowledge of Petitioner, Petitioner's business activities, Petitioner's Marks, and/or Petitioner's use of Petitioner's Mark, prior to as well as subsequent to Registrant's use of Registrant's Mark and filing of its federal trademark application(s), and in so doing, state the dates on which each person or persons gained such knowledge or awareness.

ANSWER:

INTERROGATORY NO. 21: Identify the intended and actual class or type of consumers of Registrant's products and services offered and/or sold under or in connection with Registrant's Mark or similar designation.

ANSWER:

INTERROGATORY NO. 22: Identify each lay and expert witness Registrant has consulted with regard to the facts and circumstances of this matter and if expected to testify state the subject matter of each such witnesses' expected testimony, and identify each exhibit that Registrant intends to introduce or rely upon in connection with each such witness.

ANSWER:

INTERROGATORY NO. 23: Identify and describe all documents Registrant expects to use, introduce or rely upon at the time of trial in this matter.

ANSWER:

INTERROGATORY NO. 24: Identify all persons who were consulted or participated in the preparation of the answers to these interrogatories.

ANSWER:

INTERROGATORY NO. 25: State in detail the factual and legal basis for the Registrant's contention that the Registrant's Mark has not been abandoned without the intent to resume use. Answer to Petition to Cancel, Grounds for Cancellation at ¶ 1.

ANSWER:

INTERROGATORY NO. 26: Describe all facts and evidence upon which Registrant will rely to establish the defense set forth by Registrant in its Answer to Petition to Cancel.

ANSWER:

INTERROGATORY NO. 27: Has the Registrant taken legal action against a third party to police or enforce its alleged rights in Registrant's Mark? If so, please set forth, with particularity the following:

1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

ANSWER:

INTERROGATORY NO. 28: Aside from the instant litigation between the parties hereto, has a third-party taken legal action against the Registrant regarding the Registrant's use of Registrant's Mark? If so, please set forth, with particularity the following:

1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

ANSWER:

DATED this 25th day of June, 2012.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esquire
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Telephone (800)906-8626 x 100
Facsimile (270) 477-4574
mswyers@thetrademarkcompany.com
Attorney for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 1,962,898,
For the mark AMERICAN MUSCLE,
Registered on the Principal Register on March 19, 1996.

Run It Consulting, LLC,

Petitioner,

vs.

Augusto Lodi,

Registrant.

:
:
:
:
:
:
:
:
:

Cancellation No. 92055426

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 25th day of
June, 2012, to be served, via first class mail, postage prepaid, upon:

Scott W. Kelley, Esq.
Kelley & Kelley LLP
6320 Canoga Avenue, Suite 1650
Woodland Hills, CA 91367

/Matthew H. Swyers/
Matthew H. Swyers

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Cancellation No. 92055426

Run It Consulting, LLC,

Petitioner,

vs.

Trademark Registration No. 1,962,898
For the mark: AMERICAN MUSCLE
Date Registered: March 19, 1996

Augusto Lodi,

Registrant.

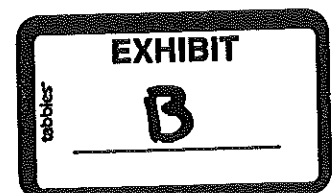
**REGISTRANT'S SUPPLEMENTAL RESPONSE TO PETITIONER'S
FIRST SET OF INTERROGATORIES**

COMES NOW Registrant Leander Lodi, successor-in-interest to Augusto Lodi ("Registrant") and provides supplemental responses to Petitioner Run It Consulting, LLC's ("Petitioner") First Set of Interrogatories propounded on July 31, 2012, as follows:

Subject to the stated objections, information responsive to these Interrogatories will be made available to Petitioner. Such information will be provided in written responses by Registrant. Additional information responsive to these Interrogatories will be made available subject to the confidential protective order entered in this case. Any withheld information, to the extent any is withheld, will be made available when and if any such objections are withdrawn and/or when these responses are supplemented.

GENERAL OBJECTIONS

Registrant states the following general objections to Petitioner's First Set of Interrogatories, which objections are incorporated by reference into each and every one of Registrant's responses to the full extent applicable.



1. Registrant is responding to Petitioner's Interrogatories in accordance with the Federal Rules of Civil Procedure and the rules of the Trademark Trial and Appeal Board and objects to the extent that any Interrogatories require Registrant to perform tasks not required by the Federal Rules of Civil Procedure or the rules of the Trademark Trial and Appeal Board, or to go beyond the scope of proper discovery.

2. Registrant objects to providing information that is protected from discovery under the attorney-client privilege, the work product doctrine and/or any other applicable privilege, doctrine or immunity. This shall be a standing and continuing objection.

3. Registrant objects to producing information called for by Petitioner's Interrogatories that: (a) was already provided in pleadings and other papers filed/served in this and any related action or controversy; (b) was previously provided by either party to the other in connection with this action or any related action, if any; or (c) is publicly available.

4. Registrant objects to the disclosure of information that reflects or constitutes trade secrets and/or confidential business information of Registrant - unless subject to the terms of an applicable Confidential Protective Order entered in this case.

5. Registrant objects to each of the Interrogatories insofar as a particular Interrogatory may seek information not within his possession, custody and/or control. Registrant will only produce that information within his possession, custody and/or control.

6. Registrant objects to each of the Interrogatories insofar as a particular Interrogatory overlaps with or duplicates the subject matter of another Interrogatory.

7. Registrant objects to each of the Interrogatories as over broad and unduly burdensome insofar as a particular Interrogatory is not limited in scope as to time. Registrant's use of Registrant's Mark spans more than twenty years. In that time records have become lost and memories have faded. Registrant responds to these interrogatories to the best of his present ability.

8. Registrant responds to Petitioners First Set of Interrogatories to the best of his present knowledge and only insofar as Registrant may be deemed to have personal knowledge or information that forms the basis of the responses indicated. Registrant reserves the right to supplement these responses from time to time and will do so in the event he is so required by the Federal Rules of Civil Procedure and/or the rules of the Trademark Trial and Appeal Board.

* * * * *

INTERROGATORY NO. 1: State in detail the nature of the business, operations, and activities conducted by Registrant.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as overbroad and unduly burdensome insofar as the Interrogatory encompasses "business, operations and activities" other than those conducted under Registrant's Mark. Registrant has conducted "business, operations and activities" under Registrant's Mark since at least as early as March 1987. Registrant has also engaged in "business, operations and activities" other than under Registrant's Mark. Registrant will respond to this Interrogatory understanding that "business, operations and activities" is in relation to Registrant's Mark and not any other business, operations and/or activities in which Registrant may be engaged.

Without waiving and subject to the specific and general objections, Registrant responds as follows:

Registrant started the business associated with Registrant's Mark in 1987 with the help of his mother and father, the latter being predecessor-in-interest to Registrant in Registrant's Mark.

Registrant had been bodybuilding for a number of years and gained substantial knowledge about nutrition in the process, including the importance of proper supplementation. Registrant started operating as American Muscle on a shoestring budget, putting his heart and soul into the business, often working long hours six to seven days a week. Eventually, the hard work paid off as the business of American Muscle was thriving after several years.

In addition to selling supplements, Registrant also sold active wear and body building/weightlifting accessories under Registrant's Mark. Registrant advertised in many major body building magazines, set up booths at body building contests, and had a worldwide customer base. It is fair to say that Registrant, Registrant's business, and Registrant's Mark was very well known in the fitness industry. Registrant was known for providing exceptional products at fantastic prices with great customer service. The sky was the limit and business was great for Registrant.

In the mid-to-late 1990's, Registrant's business hit a bit of a snag. As it turned out, one of Registrant's manufacturers was not supplying exactly the product that Registrant had ordered. For the product Acetabol, Registrant had ordered Acetyl-L-Carnitine but was instead provided with L-Carnitine. Registrant had labeled his Acetabol product as containing Acetyl-L-Carnitine and when a competitor had the product analyzed discovered that it contained L-Carnitine.

The mislabeling of the Acetabol product resulted in negative publicity, exacerbated by the fact that the competitor that tested the product was tied to a major body building magazine, which continued the negative publicity for nearly a year. This impacted Registrant's business tremendously. However, Registrant's manufacturer replaced all bottles of Acetabol that did not meet the label description with product that did contain Acetyl-L-Carnitine. Registrant, in turn,

replaced all bottles of Acetabol containing L-Carnitine that he had sold with bottles of Acetabol containing Acetyl-L-Carnitine for free.

Registrant believed that he had made things right with his customers, but the negative publicity had substantially reduced the amount of business that Registrant was doing under Registrant's Mark. In order to stay in business, Registrant changed his business model and opted to only deal with a few distributors, selling off his existing inventory and focusing on a few basic products.

This business model has continued through the present, where Registrant continues to sell his supplement, active wear, and exercise equipment products through a select few distributors. Registrant presently sells Whey Protein Powder, Pure Creatine Monohydrate, t-shirts, and weightlifting straps. Registrant continues to look for and works on developing new supplements to add to his product line.

Registrant at one time owned three United States Trademark Registrations. These include Registrant's Mark that is the subject of the instant Petition for Cancellation, U.S. registration no. 1,505,243 (int. class 41), and U.S. registration no. 1,549,729 (int. class 25). Registrant did not renew registration no. 1,505,243 because he was no longer providing the subject services. Registrant did not renew registration no. 1,549,729 because he was no longer using the logo design with the triangle.

INTERROGATORY NO. 2: Identify each person who has knowledge of Registrant's selection and adoption of Registrant's Mark and who has knowledge of how and when it was first used, how it is used today, and how it is intended to be used in the future. To the

extent this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the most knowledge.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as overbroad and unduly burdensome insofar as the Interrogatory asks Registrant to identify "each person who has knowledge of ... how and when [Registrant's Mark] was first used, how it is used today." Such phrasing could be interpreted to include every person that purchased goods bearing Registrant's mark around the time of its first use, as well as, today. Registrant will respond by identifying those persons most knowledgeable on the topics identified in the interrogatory.

Without waiving and subject to the specific and general objections, Registrant responds as follows: Augusto Lodi (now deceased) and Leander Lodi had/have knowledge of Registrant's selection and adoption of Registrant's mark; Augusto Lodi (now deceased) and Leander Lodi had/have knowledge of how and when Registrant's Mark was first used; Leander Lodi, Irene Lodi, Ed Holmes, Richard Cootes, Magle Kayhan, and Ray Land have knowledge of how Registrant's Mark is used today; and Leander Lodi has knowledge of how Registrant's Mark is intended to be used in the future.

INTERROGATORY NO. 3: Describe in detail all goods and services formerly and currently being offered by Registrant in conjunction with Registrant's Mark and any goods or services intended to be used in connection with Registrant's Mark in the future identifying the dates on which Registrant first began such use(s) and/or and the geographic areas in which such use occurred and/or will occur.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows. Registrant presently offers the following products and identifies the corresponding dates and geographic areas:

<u>Product</u>	<u>Dates Offered</u>	<u>Geographic Area</u>
Whey Protein Powder Vanilla Chocolate Wildberry Strawberry	1995 to the present	Nationwide and Internationally
PCM -- Pure Creatine Monohydrate (Dietary Supplement)	1995 to the present	Nationwide and Internationally
T-shirts and tank tops	1987 to the present	Nationwide and Internationally
Weightlifting straps	1987 to the present	Nationwide and Internationally

Registrant previously offered the following products and identifies the corresponding dates and geographic areas:

<u>Product</u>	<u>Dates Offered</u>	<u>Geographic Area</u>
B125, B150	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
C1000, C1500	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Aminos	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Minerals	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Sport Pack	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Super SP Pack	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Mike & Egg Protein Powder	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Bulk-up Weight Gain Powder	1987 to 1997+ (sold out inventory)	Nationwide and Internationally
Creatine Enhanced Formula	1997 to 2005+ (sold out inventory)	Nationwide and Internationally

GH2000	1995 to 2000+ (sold out inventory)	Nationwide and Internationally
Acetabol (Anabolic/Anti Catabolic Formula)	1997 to 2002+ (sold out inventory)	Nationwide and Internationally
GK Glutamine	1996 to 2008+ (sold out inventory)	Nationwide and Internationally
Vanadyl Sulfate 3 rd Generation	1996 to 2006+ (sold out inventory)	Nationwide and Internationally
Ephedrine HCL w/Guaifenesin	1996 to 2000+ (sold out inventory)	Nationwide and Internationally
Hydrocut (Super Thermogenic Formula)	1997 to 2002+ (sold out inventory)	Nationwide and Internationally
Thermogenic Fat Metabolizer	1996 to 2000+ (sold out inventory)	Nationwide and Internationally
Chromium Picolinate	1996 to 2006+ (sold out inventory)	Nationwide and Internationally
DHEA	1996 to 2005+ (sold out inventory)	Nationwide and Internationally
Melatonin Complex	1996 to 2005+ (sold out inventory)	Nationwide and Internationally
Pinenogenol	1996 to 2001+ (sold out inventory)	Nationwide and Internationally
Multi-vitamin	1996 to 2004+ (sold out inventory)	Nationwide and Internationally
19-Norandrodione - Direct Dione Response (DDR)	1998 to 2006+ (sold out inventory)	Nationwide and Internationally
Weightlifting belts	1987 to 2006	Nationwide and Internationally
Wrist and knee wraps	1987 to 2006	Nationwide and Internationally
Weightlifting gloves	1987 to 2006	Nationwide and Internationally
Athletic Shorts and pants	1987 to 2006	Nationwide and Internationally
Sweat tops and pants	1987 to 2006	Nationwide and Internationally
Leather jackets	1987 to 2006	Nationwide and Internationally

INTERROGATORY NO. 4: Describe any periods since Registrant's alleged date of first use, as set forth in the preceding paragraph, during which Registrant did not make use of the Registrant's Mark.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that no such periods of non-use exist.

INTERROGATORY NO. 5: Identify the date on which Registrant alleges it first began use of Registrant's Mark in interstate commerce in connection with each good and/or services identified in your response to Interrogatory No. 3 and how such use occurred.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the Interrogatory seeks identification of a date of first use in interstate commerce and how such use occurred as to each good identified in response to interrogatory number 3 rather than each type/class of good. Registrant will respond to this interrogatory by identifying the date of use and how such use occurred as to each type/class of good.

Without waiving and subject to the specific and general objections, Registrant responds by referring to the dates identified in his response to Interrogatory No. 3. As to how such use occurred, Registrant and his father (Augusto Lodi – now deceased) sold the identified goods to friends and customers at various gyms throughout Southern California. Registrant's use soon expanded to products being offered in various branches of gyms with multiple locations, shipped to customers in other states, and sold to distributors for sale to third parties.

INTERROGATORY NO. 6: Describe in detail how Registrant is currently using Registrant's Mark, including, but not limited to, the geographic areas the mark is used.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that he is currently using Registrant's Mark by displaying it on t-shirts, weightlifting straps, and on bottles of vitamin supplements, including Whey Protein Powder (vanilla, chocolate and strawberry flavors) and PCM-Pure Creatine Monohydrate (Dietary Supplement). Such goods are sold nationwide through distributors located in Southern California, Arizona and Virginia, as well as internationally to Canada and Iran.

INTERROGATORY NO. 7: With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the channels of distribution by which the goods and/or services of Registrant reach or are expected to reach the ultimate user or consumer as well as the geographic regions in which such channels of distribution were conducted and the dates such channels of distribution were instituted.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the Interrogatory seeks description of the channels of distribution, as well as, the dates and geographic areas, as to each good identified in response to interrogatory number 3 rather than each type/class of good. Registrant will respond to this interrogatory by identifying the channel of distribution, dates and geographic area as to each type/class of good.

Without waiving and subject to the specific and general objections, Registrant responds that all types of goods are sold through the following channels. Registrant personally sells all of the goods in his local area to friends, acquaintances, and third parties that he meets through the same. Ed Holmes, in Los Angeles, is a personal trainer and ultimate fighting promoter. Mr. Holmes sells the goods to his clients as a personal trainer and at ultimate fighting events/venues. Mr. Holmes has sold these goods since 1988 to the present. Magic Kayhan, in Virginia, is a businessman and importer/exporter. Mr. Kayhan sells the goods over his website and exports them to customers in Iran. Mr. Kayhan has sold these goods since 1989 to the present. Ray Land, in Arizona, is a personal trainer. Mr. Land sells these goods to his clients as a personal trainer. Mr. Land has sold these goods from about 1991 to 1996 and then resumed in June 2012 to the present. Richard Cootes, in Canada, operates a persona retail operation through which he sells the goods. Mr. Cootes has sold these goods since July 2012 to the present.

INTERROGATORY NO. 8: With respect to each good and/or service identified in your response to Interrogatory No. 3, indicate the dates each good and/or service was first available for sale, in what regions each good and/or service was available for sale, and by what medium such goods and/or services were offered for sale.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the Interrogatory seeks indication of dates first available for sale, regions available, and medium of sale as to each good identified in response to interrogatory number 3 rather than each type/class of good. Registrant will respond to this interrogatory by indicating the requested dates,

regions, and mediums as to each type/class of good. Registrant also objects to this Interrogatory to the extent it is duplicative of other Interrogatories in this set. Registrant will respond to this Interrogatory by reference to his other responses to the extent applicable.

Without waiving and subject to the specific and general objections, Registrant responds by referring to his earlier responses to Interrogatory Nos. 3, 5, 6 and 7.

INTERROGATORY NO. 9: With respect to each good and/or service identified in your response to Interrogatory No. 3, list all retail establishments each good and/or service has been, is, or will be available for sale, the establishments' geographic locations, and the dates each good and/or service was, is, and/or will be available at each retail store.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the Interrogatory seeks a list of all retail establishments, geographic locations, and dates as to each good identified in response to interrogatory number 3 rather than each type/class of good. Registrant will respond to this interrogatory by indicating the requested establishments, locations, and dates as to each type/class of good. Registrant also objects to this Interrogatory to the extent it is duplicative of other Interrogatories in this set. Registrant will respond to this Interrogatory by reference to his other responses to the extent applicable.

Without waiving and subject to the specific and general objections, Registrant responds by referring to his earlier responses to Interrogatory Nos. 3, 5, 6 and 7.

INTERROGATORY NO. 10: With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the manner in which Registrant's Mark is promoted in the United States, including but not limited to the media and mode of any marketing efforts as well as the geographic regions in which said promotions are conducted as well as the dates when such manners were instituted.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the Interrogatory asks Registrant to describe in detail the manner of promotion, media and mode of marketing, geographic regions, and dates as to each good identified in response to interrogatory number 3 rather than each type/class of good. Registrant will respond to this interrogatory by indicating the requested establishments, locations, and dates as to each type/class of good.

Without waiving and subject to the specific and general objections, Registrant responds that all goods sold under Registrant's Mark were promoted in advertisements appearing print magazines with nationwide distribution, including Flex Magazine, Muscle & Fitness, Exercise, Muscle Magazine, and Bodybuilding Hottest. Such magazine advertisements occurred on a monthly basis beginning in 1988 and continuing until 1999. During that same time period and continuing to the present, goods sold under Registrant's Mark were promoted by word of mouth. Starting in April 2012, Registrant set-up a website through which the goods sold under Registrant's Mark are promoted.

INTERROGATORY NO. 11: For each medium identified in the preceding interrogatory, state the annual expenditure for advertising and promotion since inception.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that Registrant's annual advertising and promotion expenditures for goods sold under Registrant's Mark from 1987-1999 averaged \$50,000 to \$100,000 per year. Since the beginning of 2012, Registrant's advertising and promotion expenditures for goods sold under Registrant's Mark has been about \$2,000 to \$3,000 for the year.

INTERROGATORY NO. 12: Identify the person or persons who, from the date of Registrant's claimed date of first use of Registrant's Mark to the present, have been responsible for the marketing and/or promotion of Registrant's goods and services under Registrant's Mark indicating the period during which each person was so responsible.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that Leander Lodi has been so responsible.

INTERROGATORY NO. 13: Identify all advertising agencies, public relations agencies or market research agencies that Registrant has used, participated with or cooperated with in advertising, marketing or promoting the goods/services identified in response to Interrogatory No. 3, and indicate the time period(s) during which such activities were conducted.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows:
none.

INTERROGATORY NO. 14: Identify any and all licensees of Registrant's Mark, if any, and in so doing, describe each licensing arrangement and identify each product and/or service offered or sold by each licensee under Registrant's Mark or similar designation.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows:
none.

INTERROGATORY NO. 15: Describe in detail all quality control measures adopted and used by Registrant in the oversight of the use of Registrant's Marks by the licensees identified in the preceding interrogatory.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that this interrogatory is not applicable.

INTERROGATORY NO. 16: Describe in detail any adversarial proceeding or challenge, if any, involving Registrant's Mark, or any similar designation, before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission, or any court or tribunal, including but not limited to any challenge by cease and desist letter to Registrant's Mark aside

from the instant proceedings instituted by the Petitioner.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows:
none.

INTERROGATORY NO. 17: Identify and describe any and all opinions relating to the Registrant's Mark, including but not limited to Registrant's use of the mark vis-à-vis Petitioner's Mark.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as potentially seeking information protected from disclosure by the attorney/client communication privilege, attorney work product doctrine, and/or any other applicable privilege or doctrine. Registrant will only respond to this interrogatory to the extent that it does not seek the disclosure of such protected information.

Without waiving and subject to the specific and general objections, Registrant responds as follows: none.

INTERROGATORY NO. 18: Identify and describe any and all investigations, polls, studies, evaluations, analysis, tests, ratings, or surveys relating to Registrant's Mark.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as potentially seeking information protected from disclosure by the attorney/client communication privilege,

attorney work product doctrine, and/or any other applicable privilege or doctrine. Registrant will only respond to this interrogatory to the extent that it does not seek the disclosure of such protected information.

Without waiving and subject to the specific and general objections, Registrant responds as follows: none.

INTERROGATORY NO. 19: Describe in detail how Registrant maintained Registrant's date of first use.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as vague insofar as the meaning of the phrase "maintained Registrant's date of first use" is unclear. This phrase can mean maintain records of such date of first use or it can mean maintained continuous use since such date of first use. Registrant will respond to this interrogatory understanding the phrase to mean the latter.

Without waiving and subject to the specific and general objections, Registrant responds that he has continuously used Registrant's Mark by distributing, selling and promoting the goods as identified and described in the above stated interrogatory responses.

INTERROGATORY NO. 20: Describe in detail Registrant's awareness and knowledge of Petitioner, Petitioner's business activities, Petitioner's Marks, and/or Petitioner's use of Petitioner's Mark, prior to as well as subsequent to Registrant's use of Registrant's Mark and filing of its federal trademark application(s), and in so doing, state the dates on which each

person or persons gained such knowledge or awareness.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that he only became aware of Petitioner, Petitioner's Mark and Petitioner's alleged use of Petitioner's Mark upon receipt of the instant petition for cancellation. Registrant is informed and believes that Petitioner, Petitioner's Mark and/or Petitioner's alleged use of Petitioner's Mark came into existence at least fifteen years after Registrant's use and registration of Registrant's Mark.

INTERROGATORY NO. 21: Identify the intended and actual class or type of consumers of Registrant's products and services offered and/or sold under or in connection with Registrant's Mark or similar designation.

ANSWER:

Without waiving and subject to the general objections, Registrant responds that the actual and intended class or type of customers of goods sold under Registrant's Mark are athletes, bodybuilders and other health and/or fitness conscious individuals. Businesses that have such individuals as customers, i.e., gyms, exercise studios, and websites, are also actual and intended customers.

INTERROGATORY NO. 22: Identify each lay and expert witness Registrant has consulted with regard to the facts and circumstances of this matter and if expected to testify state the subject matter of each such witnesses' expected testimony, and identify each exhibit that Registrant intends to introduce or rely upon in connection with each such witness.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as premature insofar as this proceeding has only recently began and Registrant is still in the early stages of discovery and investigation. Furthermore, the time for Registrant to make his pretrial disclosures, including witnesses and exhibits, has been set by the Board in this matter and such time has not yet arrived. Registrant reserves the right to supplement this response as new witnesses and other information becomes available.

Without waiving and subject to the specific and general objections, Registrant responds that Leander Lodi is the only lay witness presently identified. Leander Lodi is expected to testify as to all facts surrounding the selection, adoption, promotion and use of Registrant's Mark from the date of first use to the present. Registrant cannot presently identify what exhibits, if any, may be introduced or relied upon in connection with this witness.

INTERROGATORY NO. 23: Identify and describe all documents Registrant expects to use, introduce or rely upon at the time of trial in this matter.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as premature insofar as this proceeding has only recently began and Registrant is still in the early stages of discovery and investigation. Furthermore, the time for Registrant to make his pretrial disclosures, including documents, has been set by the Board in this matter and such time has not yet arrived. Registrant reserves the right to make such disclosures at the time set by the Board and not before. Registrant reserves the right to supplement this response as new documents and other information

becomes available.

Without waiving and subject to the specific and general objections, Registrant responds that he cannot presently identify what documents, if any, that he expects to use, introduce or reply upon at the time of trial. Registrant refers Petitioner to the document produced in connection with Registrant's response to Petitioner's First Requests for the Production of Documents.

INTERROGATORY NO. 24: Identify all persons who were consulted or participated in the preparation of the answers to these interrogatories.

ANSWER:

Without waiving and subject to the general objections, Registrant responds Leander Lodi.

INTERROGATORY NO. 25: State in detail the factual and legal basis for the Registrant's contention that the Registrant's Mark has not been abandoned without the intent to resume use. Answer to Petition to Cancel, Grounds for Cancellation at ¶ 1.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as overbroad and unduly burdensome as it seeks to require Registrant to prove a negative. Registrant by virtue of the incontestable certificate of registration for Registrant's Mark has a presumption of validity and ownership of Registrant's Mark pursuant to 15 U.S.C. §§ 1115(a) and 1057(b). This presumption of validity and ownership includes presumptions that Registrant's Mark is distinctive and in use by Registrant. The burden of proof as to the issue of abandonment rests with Petitioner. Only if Petitioner is able to produce evidence of a period of non-use of Registrant's

Mark and Registrant's intent not to resume use of Registrant's Mark does Registrant have a burden to rebut that evidence. Registrant also objects to this Interrogatory as premature insofar as this proceeding has only recently began and Registrant is still in the early stages of discovery and investigation. Registrant reserves the right to supplement this response as his discovery and investigation progresses.

Without waiving and subject to the specific and general objections, Registrant responds that he relies upon his continuous use and absence of any periods of non-use as stated in the above responses. Registration has never intended to abandon and/or intended to not resume use after a period of non-use.

INTERROGATORY NO. 26: Describe all facts and evidence upon which Registrant will rely to establish the defense set forth by Registrant in its Answer to Petition to Cancel.

ANSWER:

In addition to the general objections, Registrant objects to this Interrogatory as overbroad and unduly burdensome as it seeks to require Registrant to prove a negative. Registrant by virtue of the incontestable certificate of registration for Registrant's Mark has a presumption of validity and ownership of Registrant's Mark pursuant to 15 U.S.C. §§ 1115(a) and 1057(b). The burden of proof in this petition for cancellation clearly rests with Petitioner as to all grounds. Only if Petitioner is able to produce evidence to support one of its claims against the continued registration of Registrant's Mark does Registrant have a burden to rebut that evidence. Registrant also objects to this Interrogatory as premature insofar as this proceeding has only recently began and Registrant

is still in the early stages of discovery and investigation. Registrant reserves the right to supplement this response as his discovery and investigation progresses.

Without waiving and subject to the specific and general objections, Registrant responds that he relies upon the certification of registration of Registrant's Mark, his continuous use of Registrant's Mark since the date of first use, and the absence of any periods of non-use as stated in the above responses.

INTERROGATORY NO. 27: Has the Registrant taken legal action against a third party to police or enforce its alleged rights in Registrant's Mark? If so, please set forth, with particularity the following:

1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows:
none.

INTERROGATORY NO. 28: Aside from the instant litigation between the parties hereto, has a third-party taken legal action against the Registrant regarding the Registrant's use of Registrant's Mark? If so, please set forth, with particularity the following:

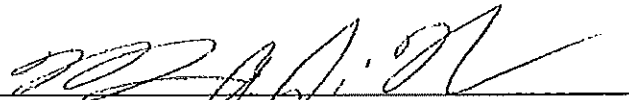
1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

ANSWER:

Without waiving and subject to the general objections, Registrant responds as follows:

none.

Dated: October 5, 2012



Michael A. DiNardo
KELLY & KELLEY, LLP
Attorneys for Registrant Leander Lodi,
successor-in-interest to Augusto Lodi

VERIFICATION

I, LEANDER LODI, have read the foregoing REGISTRANT'S SUPPLEMENTAL RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on, 10-4, 2012, at 3012 N. GRANDVIEW AVE. ALTADENA, California.

I declare under penalty of perjury that the foregoing is true and correct.

LEANDER LODI
LEANDER LODI

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, I caused a true and correct copy of the attached REGISTRANT'S SUPPLEMENTAL RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES to be served on counsel for Petitioner, via U.S. First-Class mail, postage prepaid, as follows:

Matthew H. Swyers, Esq.
The Trademark Company, PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180

Dated: October 5, 2012


Nancy Hoover